

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 649

FISCAL
NOTE

BY SENATOR TRUMP

[Introduced February 18, 2019; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-15-3c of the Code of West Virginia, 1931, as amended, relating
 2 to sales tax on motor vehicles; and exempting the sales tax on a motor vehicle titled in the
 3 name of a resident of this state if the person was not a resident of this state at the time
 4 the person acquired ownership of the vehicle and the person paid sales tax on the vehicle
 5 in another state but did not title it in the other state.

Be it enacted by the Legislature of West Virginia:

**§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of
 motor vehicle purchased out of state; definition of sale; definition of motor vehicle;
 exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to
 highways; legislative and emergency rules.**

1 (a) Notwithstanding any provision of this article or §11-15A-1 *et seq.* of this code to the
 2 contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents ~~shall be~~ are
 3 subject to the consumers sales tax imposed by this article.

4 (b) *Rate of tax on motor vehicles.* — Notwithstanding any provision of this article or §11-
 5 15A-1 *et seq.* of this code to the contrary, the rate of tax on the sale and use of a motor vehicle
 6 shall be five percent of its sale price, as defined in §11-15B-2 of this code: *Provided, That* ~~so~~ as
 7 much of the sale price or consideration as is represented by the exchange of other vehicles on
 8 which the tax imposed by this section or §17A-3-4 of this code has been paid by the purchaser
 9 shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor
 10 vehicle be new or used. However, beginning July 1, 2017, the rate of tax imposed by this section
 11 shall increase to six percent of the sales price for purchases of motor vehicles made on and after
 12 that date.

13 (c) *Motor vehicles purchased out of state.* — Notwithstanding this article or §11-15A-1 *et*
 14 *seq.* of this code to the contrary, the tax imposed by this section ~~shall apply~~ applies to all motor
 15 vehicles, used as defined by §11-15A-1 of this code, within this state, regardless of whether the
 16 vehicle was purchased in a state other than West Virginia.

17 (d) *Definition of sale.* — Notwithstanding any provision of this article or §11-15A-1 *et seq.*
18 of this code to the contrary, for purposes of this section, “sale”, “sales” or “selling” means any
19 transfer or lease of the possession or ownership of a motor vehicle for consideration, including
20 isolated transactions between individuals not being made in the ordinary course of repeated and
21 successive business and also including casual and occasional sales between individuals not
22 conducted in a repeated manner or in the ordinary course of repetitive and successive
23 transactions.

24 (e) *Definition of motor vehicle.* — For purposes of this section, “motor vehicle” means
25 every propellable device in or upon which any person or property is or may be transported or
26 drawn upon a highway including, but not limited to: Automobiles; buses; motor homes;
27 motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck
28 tractors and road tractors having a weight of less than 55,000 pounds; trailers, semitrailers, full
29 trailers, pole trailers and converter gear having a gross weight of less than 2,000 pounds; and
30 motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes;
31 except that the term “motor vehicle” does not include: Modular homes, manufactured homes,
32 mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the
33 highways but primarily designed for habitation and occupancy; devices operated regularly for the
34 transportation of persons for compensation under a certificate of convenience and necessity or
35 contract carrier permit issued by the Public Service Commission; mobile equipment as defined in
36 §17A-1-1 of this code; special mobile equipment as defined in §17A-1-1 of this code; trucks, truck
37 tractors and road tractors having a gross weight of 55,000 pounds or more; trailers, semitrailers,
38 full trailers, pole trailers and converter gear having weight of 2,000 pounds or greater: *Provided,*
39 That notwithstanding the provisions of §11-15-9 of this code, the exemption from tax under this
40 section for mobile equipment as defined in §17A-1-1 of this code; special mobile equipment
41 defined in §17A-1-1 of this code; Class B trucks, truck tractors and road tractors registered at a
42 gross weight of 55,000 pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers

43 and converter gear having weight of 2,000 pounds or greater does not subject the sale or
44 purchase of the vehicle to the consumers sales and service tax imposed by §11-15-3 of this code.

45 (f) *Exemptions.* — Notwithstanding any other provision of this code to the contrary, the tax
46 imposed by this section ~~shall not be~~ is not subject to any exemption in this code other than the
47 following:

48 (1) The tax imposed by this section does not apply to any passenger vehicle offered for
49 rent in the normal course of business by a daily passenger rental car business as licensed under
50 the provisions of §17A-6D-1 *et seq.* of this code For purposes of this section, a daily passenger
51 car means a motor vehicle having a gross weight of 8,000 pounds or less ~~and~~ that is registered
52 in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed
53 a tax of not less than \$1 nor more than \$1.50 for each day or part of the rental period. The
54 Commissioner of the Division of Motor Vehicles shall propose an emergency rule in accordance
55 with the provisions of §29A-3-1 *et seq.* of this code to establish this tax.

56 (2) The tax imposed by this section does not apply where the motor vehicle has been
57 acquired by a corporation, partnership, or limited liability company from another corporation,
58 partnership, or limited liability company that is a member of the same controlled group and the
59 entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by
60 this section. For the purposes of this section, control means ownership, directly or indirectly, of
61 stock or equity interests possessing 50 percent or more of the total combined voting power of all
62 classes of the stock of a corporation or equity interests of a partnership or limited liability company
63 entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing 50
64 percent or more of the value of the corporation, partnership or limited liability company.

65 (3) The tax imposed by this section does not apply where the motor vehicle has been
66 acquired by a senior citizen service organization which is exempt from the payment of income
67 taxes under the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is
68 recognized to be a bona fide senior citizen service organization by the Bureau of Senior Services

69 existing under the provisions of §16-5P-1 *et seq* of this code.

70 (4) The tax imposed by this section does not apply to any active duty military personnel
71 stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from
72 the date the person returns to this state.

73 (5) The tax imposed by this section does not apply to motor vehicles acquired by registered
74 dealers of this state for resale only.

75 (6) The tax imposed by this section does not apply to motor vehicles acquired by this state
76 or any political subdivision ~~thereof~~ of this state or by any volunteer fire department or duly
77 chartered rescue or ambulance squad organized and incorporated under the laws of this state as
78 a nonprofit corporation for protection of life or property.

79 (7) The tax imposed by this section does not apply to motor vehicles acquired by an urban
80 mass transit authority, as defined in §8-27-1 *et seq.* of this code, or a nonprofit entity exempt from
81 federal and state income tax under the Internal Revenue Code for the purpose of providing mass
82 transportation to the public at large or designed for the transportation of persons and being
83 operated for the transportation of persons in the public interest.

84 (8) The tax imposed by this section does not apply to the registration of a vehicle owned
85 and titled in the name of a resident of this state if the applicant:

86 (A) Was not a resident of this state at the time the applicant purchased or otherwise
87 acquired ownership of the vehicle;

88 (B) Presents evidence as the Commissioner of the Division of Motor Vehicles may require
89 of having:

90 (i) Either titled the vehicle in the applicant's previous state of residence; or

91 (ii) If the vehicle was not titled, paid sales tax on the vehicle in the applicant's previous
92 state of residence;

93 (C) Has relocated to this state and can present ~~such~~ any evidence as required by the
94 Commissioner of the Division of Motor Vehicles ~~may require~~ to show bona fide residency in this

95 state; and

96 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays
97 all other fees required by chapter seventeen-a of this code within 30 days of establishing
98 residency in this state as prescribed in §11-15-1a(a) of this code.

99 (9) On and after January 1, 2009, the tax imposed by this section does not apply to Class
100 B trucks, truck tractors, and road tractors registered at a gross weight of 55,000 pounds or more
101 or to Class C trailers, semitrailers, full trailers, pole trailers, and converter gear having a weight of
102 2,000 pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared
103 gross weight of 55,000 pounds or more and the title was issued without the payment of the tax
104 imposed by this section, then before the owner may obtain registration for the vehicle at a gross
105 weight less than 55,000 pounds, the owner shall surrender to the commissioner the exempted
106 registration and the exempted certificate of title and pay the tax imposed by this section based
107 upon the current market value of the vehicle.

108 (10) The tax imposed by this section does not apply to vehicles leased by residents of
109 West Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the
110 lease of any motor vehicle leased under a written contract of lease by a resident of West Virginia
111 for a contractually specified continuous period of more than 30 days. ~~which~~ The tax is equal to
112 five percent of the amount of the monthly payment, applied to each payment, and continuing for
113 the entire term of the initial lease period. ~~The tax shall be remitted~~ The lessor of the vehicle shall
114 remit the tax to the Division of Motor Vehicles on a monthly basis ~~by the lessor of the vehicle.~~
115 Leases of 30 days or less are taxable under the provisions of this article and §11-15A-1 *et seq.*
116 of this code without reference to this section.

117 (g) *Division of Motor Vehicles to collect.* — Notwithstanding any provision of this article,
118 §11-15A-1 *et seq.* and §11-10-1 *et seq.* of this code to the contrary, the Division of Motor Vehicles
119 shall collect the tax imposed by this section: *Provided, That* ~~such~~ the tax is imposed upon the
120 monthly payments for the lease of any motor vehicle leased by a resident of West Virginia. ~~which~~

121 The tax is equal to five percent of the amount of the monthly payment, applied to each payment,
122 and continuing for the entire term of the initial lease period. ~~The tax shall be remitted~~ The lessor
123 of the vehicle shall remit the tax to the Division of Motor Vehicles on a monthly basis ~~by the lessor~~
124 ~~of the vehicle.~~

125 (h) *Dedication of tax to highways.* — Notwithstanding any provision of this article or §11-
126 15A-1 *et seq.* of this code to the contrary, all taxes collected pursuant to this section, after
127 deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in
128 the State Treasury and expended by the Commissioner of Highways for design, maintenance,
129 and construction of roads in the state highway system.

130 (i) *Legislative rules; emergency rules.* — Notwithstanding any provision of this article, §11-
131 15A-1 *et seq.* and §11-10-1 *et seq.* of this code of this chapter to the contrary, the Commissioner
132 of the Division of Motor Vehicles shall ~~promulgate legislative rules~~ propose legislative rules for
133 promulgation explaining and implementing this section. ~~which~~ The rules shall be ~~promulgated~~
134 proposed for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code and
135 should include a minimum taxable value and set forth instances when a vehicle is to be taxed at
136 fair market value rather than its purchase price. ~~The authority to promulgate rules includes~~
137 ~~authority to amend or repeal those rules. If proposed legislative rules for this section are filed in~~
138 ~~the State Register before June 15, 2008, those rules may be promulgated as emergency~~
139 ~~legislative rules as provided in article three, chapter twenty-nine-a of this code.~~

140 (j) Notwithstanding any other provision of this code, effective January 1, 2009, ~~ne a~~
141 municipal sales or use tax or local sales or use tax or special downtown redevelopment district
142 excise tax or special district excise tax shall not be imposed under §7-22-1 *et seq.*, ~~or~~ §8-13-1 *et*
143 *seq.*, ~~or~~ §8-13D-1 *et seq.*, ~~or~~ §8-38-1 *et seq.* of this code, or any other provision of this code,
144 except this section, on sales of motor vehicles as defined in this article or on any tangible personal
145 property excepted or exempted from tax under this section. Nothing in this subsection shall be
146 construed to prevent the application of the municipal business and occupation tax on motor

147 vehicle retailers and leasing companies.

NOTE: The purpose of this bill is to exempt the sales tax on a motor vehicle titled in the name of a resident of this state if the person was not a resident of this state at the time the person acquired ownership of the vehicle and the person paid sales tax on the vehicle in another state but did not title it in the other state.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.